

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

DIETGOAL INNOVATIONS LLC,

*Plaintiff,*

V.

ARBY'S RESTAURANT GROUP, INC.;

ABP CORPORATION

D/B/A AU BON PAIN;

BOJANGLE'S RESTAURANTS INC.;

BURGER KING HOLDINGS, INC.;

CHICK-FIL-A, INC.;

CKE RESTAURANTS, INC.

D/B/A HARDEE'S;

CULVER FRANCHISING SYSTEM, INC.;

DOCTOR'S ASSOCIATES, INC.

D/B/A SUBWAY;

INTERNATIONAL DAIRY QUEEN, INC.;

DINEWISE INC.;

DUNKIN' BRANDS GROUP, INC.;

EPL INTERMEDIATE, INC.

D/B/A EL POLLO LOCO;

GOOGLE INC.;

JACK IN THE BOX INC.;

JIMMY JOHN'S FRANCHISE LLC;

MCDONALD'S CORPORATION;

PANDA RESTAURANT GROUP, INC.;

PANDA EXPRESS, INC.:

SONIC CORP.;

TACO BELL CORP.;

TCBY ENTERPRISES, INC.;

THE TELEVISION FOOD NETWORK, G.P.,

D/B/A FOOD NETWORK;

WAWA, INC.;

WEGMANS FOOD MARKETS, INC.;

WENDY'S INTERNATIONAL, INC.; AND

WHOLE FOODS MARKET INC.,

*Defendants.*

## **PLAINTIFF'S COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff DietGoal Innovations LLC files this Complaint against Arby's Restaurant Group, Inc.; ABP Corporation d/b/a Au Bon Pain; Bojangle's Restaurants Inc.; Burger King Holdings, Inc.; Chick-Fil-A, Inc.; CKE Restaurants, Inc. d/b/a Hardee's; Culver Franchising System, Inc.; Doctor's Associates, Inc. d/b/a Subway; International Dairy Queen, Inc.; DineWise Inc.; Dunkin' Brands Group, Inc.; EPL Intermediate, Inc. d/b/a El Pollo Loco; Google Inc.; Jack in the Box Inc.; Jimmy John's Corporation; Panda Restaurant Group, Inc.; Panda Express, Inc.; Sonic Corp.; Taco Bell Corp.; TCBY Enterprises, Inc.; The Television Food Network, G.P., d/b/a Food Network; Wawa, Inc.; Wegmans Food Markets, Inc.; Wendy's International, Inc.; and Whole Foods Market Inc. (collectively the "Defendants") and alleges as follows.

### **PARTIES**

1. Plaintiff DietGoal Innovations LLC ("DietGoal Innovations") is a Texas Limited Liability Company based in Austin, Texas.

2. Upon information and belief, Defendant Arby's Restaurant Group, Inc. ("Arby's") is a corporation organized and existing under the laws of the State of Georgia, with its principal place of business located at 1155 Perimeter Center West, Suite 1200, Atlanta, Georgia 30338. Arby's may be served with process through its registered agent Corporation Service Company d/b/a CSC - Lawyers Incorporating Service Company, 211 East 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701-3218.

3. Upon information and belief, Defendant ABP Corporation d/b/a Au Bon Pain ("ABP") is a corporation organized and existing under the laws of the State of Massachusetts, with its principal place of business located at 1 Au Bon Pain Way, Boston, Massachusetts 02210. ABP may be served with process through its registered agent CT Corporation System, 9 Capital Street, Concord, New Hampshire 03301.

4. Upon information and belief, Defendant Bojangle's Restaurants Inc. ("Bojangle's") is a corporation organized and existing under the laws of the State of North Carolina, with its principal place of business located at 9432 Southern Pines Blvd, Charlotte, North Carolina 28273. Bojangle's may be served with process through its registered agent Eric M. Newman, 9432 Southern Pine Boulevard, Charlotte, North Carolina 28273.

5. Upon information and belief, Defendant Burger King Holdings, Inc. ("Burger King") is a corporation organized and existing under the laws of the State of Florida, with its principal place of business located at 5505 Blue Lagoon Drive, Miami, Florida 33126. Burger King may be served with process through its registered agent Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

6. Upon information and belief, Defendant Chick-Fil-A, Inc. ("Chick-Fil-A") is a corporation organized and existing under the laws of the State of Georgia, with its principal place of business located at 5200 Buffington Road, Atlanta, Georgia 30349. Chick-Fil-A may be served with process through its registered agent CT Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201-4234.

7. Upon information and belief, Defendant Culver Franchising System, Inc. ("Culver") is a corporation organized and existing under the laws of the State of Wisconsin, with its principal place of business located at 1240 Water Street, Prairie du Sac, Wisconsin 53578. Culver may be served with process through its registered agent Lea Culver, 1240 Water St., Prairie Du Sac, Wisconsin 53578.

8. Upon information and belief, Defendant International Dairy Queen, Inc. ("Dairy Queen") is a corporation organized and existing under the laws of the State of Minnesota, with its principal place of business located at 7505 Metro Boulevard, Minneapolis, Minnesota 55439.

Dairy Queen may be served with process through its registered agent CT Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201.

9. Upon information and belief, Defendant DineWise Inc. (“DineWise”) is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 500 Bi County Boulevard, Suite 400, Farmingdale, New York 11735. DineWise may be served with process through its President at 500 Bi County Boulevard, Suite 400, Farmingdale, New York 11735.

10. Upon information and belief, Defendant Dunkin’ Brands Group, Inc. (“Dunkin’ Brands”) is a corporation organized and existing under the laws of the State of Massachusetts, with its principal place of business located at 130 Royall Street, Canton, Massachusetts 02021. Dunkin’ Brands may be served with process through its registered agent Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

11. Upon information and belief, Defendant EPL Intermediate, Inc. d/b/a El Pollo Loco (“El Pollo Loco”) is a corporation organized and existing under the laws of the State of California, with its principal place of business located at 3535 Harbor Blvd. Suite 100, Costa Mesa, California 92626-1494. El Pollo Loco may be served with process through its registered agent Corporation Service Company dba CSC – Lawyers Incorporating Service, 2730 Gateway Oaks Dr., Suite 100, Sacramento, CA 95833.

12. Upon information and belief, Defendant The Television Food Network, G.P., d/b/a Food Network (“Food Network”) is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 75 Ninth Avenue, New York, New York 10011. Food Network may be served with process through its President at 75 Ninth Avenue, New York, New York 10011.

13. Upon information and belief, Google Inc. (“Google”) is a corporation organized and existing under the laws of the State of California, with its principal place of business located at 1600 Amphitheatre Parkway, Mountain View, California 94043. Google may be served with process through its registered agent Corporation Service Company d/b/a CSC – Lawyers Inc., 211 East 7th Street, Suite 620, Austin, Texas 78701-3218.

14. Upon information and belief, Defendant CKE Restaurants, Inc. d/b/a Hardee’s (“Hardee’s”) is a corporation organized and existing under the laws of the State of California, with its principal place of business located at 6307 Carpinteria Ave., Suite A, Carpinteria, California 93013. Hardee’s may be served with process through its registered agent Corporation Service Company dba CSC – Lawyers Incorporating Service, 2730 Gateway Oaks Dr., Suite 100, Sacramento, CA 95833.

15. Upon information and belief, Defendant Jack in the Box Inc. (“Jack in the Box”) is a corporation organized and existing under the laws of the State of California, with its principal place of business located at 9330 Balboa Avenue, San Diego, California 92123. Jack in the Box may be served with process through its registered agent CT Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201.

16. Upon information and belief, Defendant Jimmy John’s Franchise LLC (“Jimmy John’s”) is a corporation organized and existing under the laws of the State of Illinois, with its principal place of business located at 2212 Fox Drive, Champaign, Illinois 61820. Jimmy John’s may be served with process through its registered agent Jeffery B. Wampler, 411 W. University Ave., Champaign, Illinois 61824.

17. Upon information and belief, Defendant McDonald’s Corporation (“McDonald’s”) is a corporation organized and existing under the laws of the State of Illinois,

with its principal place of business located at 1 McDonald's Plaza, Oak Brooks, Illinois 60523. McDonald's may be served with process through its registered agent Prentice Hall Corporation System, 211 East 7th Street, Suite 620, Austin, Texas 78701.

18. Upon information and belief, Defendant Panda Restaurant Group, Inc. and Panda Express, Inc. (collectively "Panda Express") are corporations organized and existing under the laws of the State of California, with their principal place of business located at 1683 Walnut Grove Avenue, Rosemead, California 91770. Panda Express may be served with process through its registered agent David S. Chang, 1646 Rising Meadow, Arlington, Texas 76018.

19. Upon information and belief, Defendant Sonic Corp. ("Sonic") is a corporation organized and existing under the laws of the State of Oklahoma, with its principal place of business located at 300 Johnny Bench Drive, Oklahoma City, Oklahoma 73104. Sonic may be served with process through its registered agent Paige S. Bass at 300 Johnny Bench Drive, Oklahoma City, Oklahoma 73104.

20. Upon information and belief, Defendant Doctor's Associates, Inc. d/b/a Subway ("Subway") is a corporation organized and existing under the laws of the State of Connecticut, with its principal place of business located at 325 Bic Dr., Milford, Connecticut 06461-3072. Subway may be served with process through its registered agent Corporation Service Company, 211 East 7th Street, Suite 620, Austin, Texas 78701.

21. Upon information and belief, Defendant Taco Bell Corp. ("Taco Bell") is a corporation organized and existing under the laws of the State of California, with its principal place of business located at 1 Glen Bell Way, Irvine, California 92618. Taco Bell may be served with process through its registered agent CT Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201.

22. Upon information and belief, Defendant TCBY Enterprises, Inc. (“TCBY”) is a corporation organized and existing under the laws of the State of Utah, with its principal place of business located at 2855 E Cottonwood Pkwy, Suite 400, Salt Lake City, Utah 84121-7050. TCBY may be served with process through its registered agent Michael R. Ward at 1141 W. 2400 S., Salt Lake City, Utah 84119.

23. Upon information and belief, Defendant Wawa, Inc. (“Wawa”) is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal place of business located at Red Rood, Baltimore Pike, Wawa, Pennsylvania 19063. Wawa may be served with process through its registered agent CT Corporation System, 1635 Market Street, Philadelphia, Pennsylvania 19103.

24. Upon information and belief, Wegmans Food Markets, Inc. (“Wegmans”) is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 1500 Brooks Avenue, P.O. Box 30844, Rochester, New York 14603-0844. Wegmans may be served with process through its registered agent Paul S. Speranza, Jr. at 1500 Brooks Ave., Box 30844, Rochester, New York 14603-0844.

25. Upon information and belief, Defendant Wendy’s International, Inc. (“Wendy’s”) is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business located at 1 Dave Thomas Boulevard, Dublin, Ohio 43017. Wendy’s may be served with process through its registered agent Corporation Service Company d/b/a CSC - Lawyers Incorporating Service Company, 211 East 7th Street, Suite 620, Austin, Texas 78701-3218.

26. Upon information and belief, Whole Foods, Market Inc. (“Whole Foods”) is a corporation organized and existing under the laws of the State of Texas, with its principal place

of business located at 550 Bowie Street, Austin, Texas 78703. Whole Foods may be served with process through its registered agent CT Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201.

### **JURISDICTION AND VENUE**

27. This is an action for patent infringement arising under the patent laws of the United States of America, Title 35, United States Code.

28. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

29. Upon information and belief, each of the Defendants is subject to this Court's general and/or specific personal jurisdiction because it (a) is a resident of the State of Texas; and/or (b) has designated an agent for service of process in the State of Texas; and/or (c) has committed acts of infringement in the State of Texas as alleged below; and/or (d) is engaged in continuous and systematic activities in the State of Texas. Therefore, this Court has personal jurisdiction over each of the Defendants under the Texas long-arm statute, TEX. CIV. PRAC. & REM. CODE §17.042.

30. Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, each Defendant has a regular and established place of business in this district, and/or has transacted business in this district and has committed and/or induced acts of patent infringement in this district.

### **THE PATENT-IN-SUIT**

31. On July 1, 2003, the United States Patent and Trademark Office issued United States Patent No. 6,585,516 (the "516 patent") entitled "Method and System for Computerized



Visual Behavior Analysis, Training, and Planning,” a true copy of which is attached as Exhibit A.

32. DietGoal Innovations is the exclusive licensee of the ‘516 patent and possesses all rights to sue for and recover all past, present and future damages for infringement of the ‘516 patent.

**CLAIM 1 -- INFRINGEMENT OF U.S. PATENT NO. 6,585,516**

33. Defendant Arby’s has been and now is directly infringing one or more claims of the ‘516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.arbys.com](http://www.arbys.com), which has a computerized meal planning interface at <http://www.arbys.com/food/build-a-meal-calculator.html>.

34. Defendant ABP has been and now is directly infringing one or more claims of the ‘516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.aubonpain.com](http://www.aubonpain.com), which has a computerized meal planning interface at <http://www.aubonpain.com/nutrition/smartmenu.aspx>.

35. Defendant Bojangle’s has been and now is directly infringing one or more claims of the ‘516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.bonjangles.com](http://www.bonjangles.com), which has a computerized meal planning interface at <http://bojangles.com/menu#sandwiches>.

36. Defendant Burger King has been and now is directly infringing one or more claims of the ‘516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.bk.com](http://www.bk.com), which has a computerized meal planning interface at <http://www.bk.com/en/us/menu-nutrition/index.html>.

37. Defendant Chick-Fil-A has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.chick-fil-a.com](http://www.chick-fil-a.com), which has a computerized meal planning interface at <http://www.chick-fil-a.com/Food/Meal>.

38. Defendant Culver has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.culvers.com](http://www.culvers.com), which has a computerized meal planning interface at [http://www.culvers.com/menu/nutrition\\_facts.aspx](http://www.culvers.com/menu/nutrition_facts.aspx).

39. Defendant Dairy Queen has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.dairyqueen.com](http://www.dairyqueen.com), which has a computerized meal planning interface at <http://www.dairyqueen.com/us-en/eats-and-treats/nutrition-calculator/>.

40. Defendant DineWise has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.dinewise.com](http://www.dinewise.com), which has a computerized meal planning interface at [http://www.dinewise.com/nutritional\\_mix\\_and\\_match\\_meals.php](http://www.dinewise.com/nutritional_mix_and_match_meals.php).

41. Defendant Dunkin' Brands has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.dunkinonuts.com](http://www.dunkinonuts.com), which has a computerized meal planning interface at <http://www.dunkinonuts.com/content/dunkinonuts/en/menu/nutrition.html>.

42. Defendant El Pollo Loco has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United

States the computer implemented website [www.elpolloloco.com](http://www.elpolloloco.com), which has a computerized meal planning interface at <http://www.elpolloloco.com/nutrition.aspx>.

43. Defendant Food Network has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.foodnetwork.com](http://www.foodnetwork.com), which has a computerized meal planning interface at

<http://www.foodnetwork.com/search/delegate.do?fnMealType=dinner&fnIngredient=chicken&fnTime=&fnChef=&fnSearchType=mealPlanner>.

44. Defendant Google has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.google.com](http://www.google.com), which has a computerized meal planning interface at <http://www.google.com/landing/recipes/>.

45. Defendant Hardee's has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.hardees.com](http://www.hardees.com), which has a computerized meal planning interface at <http://www.hardees.com/menu/alt-options>.

46. Defendant Jack in the Box has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.jackinthebox.com](http://www.jackinthebox.com), which has a computerized meal planning interface at <http://www.jackinthebox.com/nutrition/build-a-meal.php>.

47. Defendant Jimmy John's has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United

States the computer implemented website [www.jimmyjohns.com](http://www.jimmyjohns.com), which has a computerized meal planning interface at <http://www.jimmyjohns.com/menu/nutrition.aspx>.

48. Defendant McDonald's has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.mcdonalds.com](http://www.mcdonalds.com), which has a computerized meal planning interface at [http://www.mcdonalds.com/us/en/food/full\\_menu/salads/premium\\_bacon\\_ranchsaladwithcrispychicken.html](http://www.mcdonalds.com/us/en/food/full_menu/salads/premium_bacon_ranchsaladwithcrispychicken.html).

49. Defendant Panda Express has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.pandaexpress.com](http://www.pandaexpress.com), which has a computerized meal planning interface at [http://www.pandaexpress.com/menu/menu-items\\_flash.aspx](http://www.pandaexpress.com/menu/menu-items_flash.aspx).

50. Defendant Sonic has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.sonicdrivein.com](http://www.sonicdrivein.com), which has a computerized meal planning interface at <http://www.sonicdrivein.com/nutrition/>.

51. Defendant Subway has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.subway.com](http://www.subway.com), which has a computerized meal planning interface at <http://www.subway.com/menu/MealBuilder/MealBuilder.aspx>.

52. Defendant Taco Bell has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.tacobell.com](http://www.tacobell.com), which has a computerized meal planning interface at <http://www.tacobell.com/nutrition/calculator>.

53. Defendant TCBY has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.tcbby.com](http://www.tcbby.com), which has a computerized meal planning interface at <http://tcbby.com/menu-nutrition/soft-serve/>.

54. Defendant Wawa has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.wawa.com](http://www.wawa.com), which has a computerized meal planning interface at <http://www.wawa.com/wawaweb/Nutrition/Default.aspx>.

55. Defendant Wegmans has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.wegmans.com](http://www.wegmans.com), which has a computerized meal planning interface at <http://www.wegmans.com/webapp/wcs/stores/servlet/MealBuilderView?storeId=10052&catalogId=&langId=-1>.

56. Defendant Wendy's has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.wendys.com](http://www.wendys.com), which has a computerized meal planning interface at <http://www.wendys.com/food/Nutrition.jsp>.

57. Defendant Whole Foods has been and now is directly infringing one or more claims of the '516 patent, in violation of 35 U.S.C. § 271, by making and/or using in the United States the computer implemented website [www.wholefoodsmarket.com](http://www.wholefoodsmarket.com), which has a computerized meal planning interface at <http://www.wholefoodsmarket.com/recipes/advanced-search.php>.

58. As a direct and proximate consequence of the acts and practices of the Defendants in infringing, directly and/or indirectly, one or more claims of the '516 patent, DietGoal Innovations has suffered, is suffering, and will continue to suffer injury and damages for which it is entitled to relief under 35 U.S.C. § 284 in an amount to be determined at trial.

59. The limitation of damages provision of 35 U.S.C. § 287(a) is not applicable to DietGoal Innovations.

60. This case presents exceptional circumstances within the meaning of 35 U.S.C. § 285 and DietGoal Innovations is thus entitled to an award of its reasonable attorneys' fees.

### **DEMAND FOR JURY TRIAL**

61. DietGoal Innovations, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable.

### **PRAYER FOR RELIEF**

WHEREFORE, DietGoal Innovations requests entry of judgment that:

1. Defendants have infringed the patent-in-suit;
2. Defendants account for and pay to Plaintiff all damages caused by their respective infringement of the patent-in-suit; and
3. Plaintiff be granted pre-judgment and post-judgment interest on the damages caused to it by reason of one or more of Defendants' patent infringement;
4. The Court declare this an exceptional case and that Plaintiff be granted reasonable attorneys' fees in accordance with 35 U.S.C. § 285;
5. Costs be awarded to Plaintiff; and
6. Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: September 15, 2011

Respectfully submitted,

**BUETHER JOE & CARPENTER, LLC**

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